

ESTTA Tracking number: **ESTTA416827**

Filing date: **06/28/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Valeritas, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	750 Route 202, Suite 100 South Bridgewater, NJ 08807 UNITED STATES		

Attorney information	Gregory M. Krakau Morse, Barnes-Brown & Pendleton, P.C. 1601 Trapelo Road, Suite 205 Waltham, MA 02451 UNITED STATES ttab@mbbp.com, gkrakau@mbbp.com, tdunn@mbbp.com, fkasparian@mbbp.com Phone:781-622-5930
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Registration Subject to Cancellation

Registration No	3895432	Registration date	12/21/2010
Registrant	VGO COMMUNICATIONS, INC. 40 SIMON STREET NASHUA, NH 03060 UNITED STATES		

Goods/Services Subject to Cancellation


Class 009. First Use: 2010/07/29 First Use In Commerce: 2010/07/29 All goods and services in the class are cancelled, namely: robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Application No.	77752694	Application Date	06/04/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	V-GO		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 010. First use: Medical apparatus, namely, infusion and injection devices for administering drugs

U.S. Application No.	77752697	Application Date	06/04/2009
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	V-GO DISPOSABLE INSULIN DELIVERY		
Design Mark			
Description of Mark	<p>The mark consists of the mark "V-GO" with the "V" in dark green. The hyphen, which crosses the word "GO" horizontally approximately where the "G"'s cross bar would begin and ends inside the center of the letter "O", is a generally oval shape with with dark green on the left, fading toward the right into medium green and then light green. The generally oval shape ends with a circle in light green, with a shaded circle within the larger circle. The inner shaded circle is dark green, fading inward to light green, and then fading inward to white. The hyphen is a stylized design intended to represent a finger prick used to drawing blood for testing. The "GO" component of the wording appears in lime green. The words "DISPOSABLE INSULIN DELIVERY" are in dark green beneath the "GO" component. The white inside the inner shaded circle on the hyphen is a part of the mark. The rest of the white is not part of the mark and represents background area.</p>		
Goods/Services	Class 010. First use: Medical apparatus, namely, infusion and injection devices for administering drugs		

Attachments	77752694#TMSN.jpeg (1 page)(bytes) 77752697#TMSN.jpeg (1 page)(bytes) Petition for Cancellation - VGO Reg. No. 3,895,432 (M0302881).PDF (5 pages)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gregory M. Krakau/
Name	Gregory M. Krakau
Date	06/28/2011

Valeritas, Inc.,)	In the matter of U.S. Reg. No. 3,895,432
)	
Petitioner,)	For the Mark: VGO
)	
v.)	Filing Date: March 2, 2010
)	
VGo Communications, Inc.)	Registration Date: December 21, 2010
)	
Respondent,)	Cancellation No.: _____
)	

Valeritas, Inc, (“Valeritas” or “Petitioner”), a corporation organized and existing under the laws of the State of Delaware, having a business address of 750 Route 202, Suite 100, South Bridgewater, New Jersey 08807, believes that it is damaged and will continue to be damaged by the registration of the mark VGO, Reg. No. 3,895,432, for use on “robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems” in International Class 9, and hereby petitions to cancel the same pursuant to 15 U.S.C. § 1064.

1. Valeritas is a leading medical technology company that is committed to developing innovative drug delivery solutions.

{M0302165.1}

bona fide intent to use the mark in commerce. Valeritas's filing date precedes both Respondent's filing date and Respondent's alleged date of first use in commerce.

3. Valeritas is the owner of U.S. Trademark App. Ser. No. 77/752,697 for the mark V-GO DISPOSABLE INSULIN DELIVERY & Design for use on "[m]edical apparatus, namely, infusion and injection devices for administering drugs," in International Class 10. Valeritas' V-GO DISPOSABLE INSULIN DELIVERY & Design mark appears as follows:



Valeritas filed this application on June 4, 2009. Valeritas's filing date precedes both Respondent's filing date and Respondent's alleged date of first use in commerce.

4. On information and belief, VGo Communications, Inc. ("VCI" or "Respondent"), a corporation organized and existing under the laws of the State of Delaware with a business address of 40 Simon Street, Nashua, New Hampshire 03060, is the record owner of U.S. Reg. No. 3,895,432, for the VGO mark for use on "robotic video and audio communication hardware; computer software for use in connection with audio and video communication systems." On information and belief, Respondent filed its application on March 2, 2010 based on a bona fide intent to use the mark in commerce, and subsequently alleged a date of first use in commerce of July 29, 2010. On information and belief, VCI's mark as used in commerce appears as follows:



5. Both Respondent's filing date and Respondent's alleged date of first use in commerce are preceded by Petitioner's filing date for the mark V-GO (U.S. Trademark App. Ser.

No. 77/752,694), and by Petitioner's filing date for the mark V-GO DISPOSABLE INSULIN DELIVERY & Design (U.S. Trademark App. Ser. No. 77/752,697). As a result, Petitioner has clear priority of use over Respondent and standing to file this petition for cancellation.

6. On information and belief, Respondent sells and/or offers for sale in the United States robotic video and audio communication hardware bearing the mark VGO in the medical field.

7. On information and belief, Respondent's goods and Valeritas' goods are or will be sold to the same customers in the medical field.

8. On information and belief, Respondent's goods and Valeritas' goods are or will be offered and/or sold through the same channels of trade.

9. Respondent's VGO mark so resembles Valeritas's V-GO mark as to be likely, when used on Respondent's goods, to cause confusion, and/or to cause mistake, and/or to deceive. Purchasers and prospective purchasers are likely to believe mistakenly that the goods of Respondent are produced, sponsored, endorsed, and/or approved by Valeritas, or that Respondent and/or its goods are somehow affiliated, connected, or associated with Valeritas, resulting in detriment, damage, and injury to Valeritas.

10. Registration of Respondent's mark further damages Valeritas to the extent such registration does or would confer upon Respondent various statutory presumptions to which it is not entitled in view of Valeritas's long prior use of its distinctive V-GO mark.

11. Respondent's registration for the VGO mark (Supp. Reg. No. 3,895,432) should therefore be cancelled under 15 U.S.C. §§ 1052(d) and 1064.

WHEREFORE, Petitioner respectfully requests that this Petition for Cancellation be granted, and that Supp. Reg. No. 3,895,432 be cancelled in accordance therewith.

Respectfully Submitted,

Dated: June 28, 2011

VALERITAS, INC.

By: 

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Thomas F. Dunn

Faith D. Kasparian

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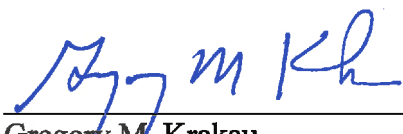
CERTIFICATE OF SERVICE

I, Gregory M. Krakau, certify that a copy of the foregoing PETITION FOR CANCELLATION was served on:

VGo Communications, Inc.
40 Simon Street
Nashua, New Hampshire 03060

Michael J. Bevilacqua, Esq.
Wilmer Cutler Pickering Hale & Dorr LLP
60 State Street
Boston, Massachusetts 02109

by placing same with the U.S. Postal Service, via first class mail, postage pre-paid, this 28th day of June, 2011.



Gregory M. Krakau

Counsel for Petitioner Valeritas, Inc.